HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.NO. 20575 OF 1999

DATED: 19.4.2007

Between:

Smt. B. Victoriah Ratnam

… Petitioner

and

The Chairman, AP Transco Limited and another

… Respondents

HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.NO. 20575 OF 1999

ORAL ORDER:

Aggrieved by the inaction of the respondents in awarding Rs.2,50,000/- towards compensation for the death of her child who died due to electrocution, the petitioner approached this court.

Facts in brief are that the petitioner and her daughter B. Sunitha, aged about 13 years, were working as maidservants. While so on 13.10.1998, when Sunitha went to dump garbage nearby the Prayer Power Church, she came in contact with a live electric pole and died. Accordingly, on a complaint made by the petitioner, and a case in Cr.No.236 of 1998 was registered under Section 304-A of the Indian Penal Code. The post-mortem examination revealed that the cause of death of the deceased was due to electrocution. The petitioner submitted that though she made several oral requests to the respondent-authorities for payment of ex-gratia, they did not take any action. Finally, the petitioner made a written representation on 3.2.1999 for payment

of compensation. It is the case of the petitioner that subsequently the respondents have offered her Rs.15,000/- as ex-gratia and requested her to withdraw the said case in Cr.No.236 of 1998. However, the petitioner was not satisfied with the said offer. Hence, the writ petition.

Repelling the averments made in the affidavit, the respondents filed a counter affidavit, inter alia, stating that the said negligence cannot be attributed to them and that since there was rain and heavy gales, which might have resulted in electrical wire jumper cut and touched the pole and caused the electrical shock to the pole. It is further stated that the owner of the neighbouring house, who constructed the first floor pushed the electrical wire closure with wooden bally which resulting in short circuit and might have cut the jumper, on account of which the death might have occurred.

Heard the counsel on either side.

The learned Standing Counsel for the respondents has drawn my attention to the judgment reported in ***CHAIRMAN, GRID CORPORATION OF ORISSA LTD V. SUKAMANI DAS*** (***[1]***), wherein it is held as follows:

> "… The High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Art.226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken

place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that "admittedly/prima facie amounted to negligence on the part of the appellants". The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to Appellant 1 had snapped and the deceased had come in contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come in contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorized intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Art.226 of the Constitution is not a proper remedy."

But, in the light of the judgment reported in ***PARVATI DEVI AND OTHERS V. COMMISSIONER OF POLICE, DELHI AND OTHERS ([2]),*** this court is unable to follow the view expressed by the Apex Court in the judgment cited 1 supra. The factual matrix in ***PARVATI DEVI*** (2 supra) is almost similar to the case on hand. In the said case, the husband of Parvati Devi died on account of

electrocution while walking on the road and the Supreme Court had gone to the extent of holding that when once the death was solely on account of electric shock and the same is established, necessarily the authorities concerned shall be held to be negligent and therefore the appellant therein was awarded Rs.1 lakh towards compensation to be paid within 3 months from the date of the order with an interest at 12% per annum.

Following the view taken by the Apex Court in the judgment cited 2 supra (Parvati Devi) and in the facts and circumstances of the case, this court awards an amount of Rs.50,000/- (rupees fifty thousand only) towards compensation to the petitioner, who is none other than the mother of the deceased.

The writ petition is accordingly disposed of and it is made clear that the petitioner can exhaust the other remedies that are left open to her. No costs.

GOPALA KRISHNA TAMADA, J

Date: 19.4.2007
cvm

[1] . (1999) 7 SCC 298

[2] . (2000) 3 SCC 754